

**EMPOWER NORTH DAKOTA COMMISSION ACTIVITIES AND ISSUES  
JULY 29, 2015, 1:00 P.M.  
ENERGY DEVELOPMENT AND TRANSMISSION COMMITTEE  
HARVEST ROOM, STATE CAPITOL  
SENATOR RICH WARDNER, CHAIRMAN**

**ALAN ANDERSON – COMMISSIONER, ND DEPARTMENT OF COMMERCE**

Good afternoon, Mr. Chairman and members of the committee, my name is Al Anderson, Commissioner of the North Dakota Department of Commerce. As Commissioner of Commerce, I also have the pleasure of serving as the chairman of the EmPower North Dakota Commission.

First, I would like to say thank you for your support for energy development this past legislative session. Many of the legislative recommendations put forward by the EmPower ND Commission, and supported by those of you on the committee last year, were all ultimately adopted by the legislature in some form. I appreciate the support the legislature has provided in areas such as infrastructure, workforce, research & development, and regulatory functions.

EmPower North Dakota Commission Overview

Since there are a few new members of this committee, I will provide a brief overview of the EmPower ND Commission. The Commission, which is referred to as the energy policy commission in statute, was established by the legislature in 2007. Its members are appointed by the Governor and it is comprised of representatives from all of North Dakota's energy industries. Its role is to make recommendations concerning the state's energy policy. The Commission reports its recommendations to the Energy Development & Transmission Committee, which decides which recommended legislation is brought forward to the legislative session.

The general principles that the EmPower ND Commission operates under include:

- Growing all energy industries
- Base decisions on sound science and sound economics
- Research and development of new technologies
- Incentives preferred over mandates
- Building upon our fair regulatory and friendly business climate
- Environmentally responsible manner

One interesting thing to note is that when the Commission was formed in 2007 a goal was established to double the state's energy production by 2025. This goal was achieved within 5 years in 2012 – thirteen years ahead of schedule. While it might not be a surprise that oil has grown by 386 percent, it is lesser known that renewable energy production grew by 225 percent in that time period.

Recap of 64<sup>th</sup> Legislative Assembly

The EmPower ND Commission's Recap of the 64<sup>th</sup> Legislative Assembly is attached. There were three bills approved which the Commission recommended and the Energy Development &

Transmission Committee introduced. There was a fourth approved that the Commission endorsed after the interim process was complete. The bills included:

- SB 2035 – created a sales and use tax exemption for valued-added energy facilities, including fertilizer and chemical plants.
- SB 2036 – exempts coal from the beneficiation tax if that coal is also subject to the coal conversion tax and makes permanent the equal tax treatment of beneficiated coal which was approved in SB 2035(2009)
- SB 2037 – establishes a process in which all wind turbines will eventually be taxed based upon capacity and production under NDCC Chapter 57-33.2.
- SB 2318 – creates a sales and use tax exemption for materials used in activities related to carbon dioxide for use in enhanced oil recovery and a property tax exemption for carbon dioxide capture systems.

The legislature also approved legislation impacting the energy industries related to Infrastructure, Workforce, Research and Development, Regulatory Environment, and Energy Growth Incentives.

#### 2015-2016 Interim Work

Over the next year the EmPower ND Commission will be busy gathering information as it considers what recommendations to make to this committee. This will include relooking at the current status of each of the energy industries. The EmPower ND Commission will also continue its focus on issues that impact all energy industries, including: Workforce, Federal Regulation, Infrastructure, Research & Development and Energy Growth Incentives. You can expect to see recommendations in each of those areas.

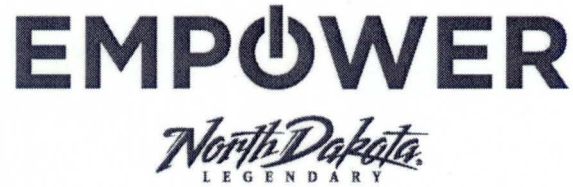
The EmPower ND Commission will be meeting monthly and we are open to coordinating meeting schedules with this committee where possible. Committee member are always welcome to attend EmPower ND Commission meetings.

The Great Plains & EmPower ND Energy Conference to be held in Bismarck on Tuesday, October 13<sup>th</sup>. This conference will focus on bringing all parties together to address the key challenges. Committee members are invited to participate in this conference.

The Energy Development & Transmission Committee can expect a report from the EmPower ND Commission next summer with the Commission's recommendations. We are also willing to provide updates throughout the interim, including an update on the current status of the goals.

Mr. Chairman and members of the Energy Development and Transmission Committee, thank you for allowing me the time to visit with you today. That concludes my testimony and I am happy to entertain any questions.





## Recap of the 64<sup>th</sup> Legislative Assembly

### EmPower ND Commission Endorsed Legislation

The EmPower ND Commission recommended six pieces of legislation that went through the interim Energy Development & Transmission Committee and supported another bill that was introduced separately. Four of these seven bills were ultimately approved. The approved bills includes:

- **SB 2035** – Creates a sales and use tax exemption for value-added energy facilities, including fertilizer and chemical plants. This exemption includes materials used for the construction of the facility in addition to equipment. Other provisions of the bill include:
  - A provision requiring a municipality to consult with the Department of Commerce prior to awarding a property tax exemption and having Commerce conduct a public hearing for projects that are estimated to exceed \$1 billion.
  - An optional interim legislative study regarding the impact of large economic development projects on political subdivisions. This study was not prioritized by the Legislative Management committee.
  - Authority for the Industrial Commission to use \$100,000 from the Oil and Gas Research Fund for a natural gas production study.
- **SB 2036** – Exempts coal from the beneficiation tax if that coal is also subject to the coal conversion tax and makes permanent the equal tax treatment of beneficiated coal which was approved in SB 2035(2009).
- **SB 2037** – Establishes a process in which all wind turbines will eventually be taxed based upon capacity and production under NDCC Chapter 57-33.2. Existing centrally assessed wind turbines will remain to be valued at their current rates for twenty years and thereafter will be subject to the capacity and production taxation method. Other provisions of the bill include:
  - Allowing a grace period for wind energy devices on which construction started before January 1, 2015, to allow the construction to be completed by January 1, 2017, and still be eligible to receive a fifteen percent tax credit.
  - Clarifying the definition of “machinery or equipment” for the new coal mine sales tax exemption.

- An optional interim legislative study regarding wind generation taxation. This study was not prioritized by the Legislative Management committee.
- Requiring the Public Service Commission to report to an interim committee regarding the status of retail sales of electricity in the state meeting or exceeding the state renewable and recycled energy objective. This report will be made to the Energy Development and Transmission Committee.
- **SB 2318** – Creates a sales and use tax exemption for materials used in activities related to carbon dioxide for use in enhanced oil recovery and a property tax exemption for carbon dioxide capture systems.
  - The bill also includes a mandatory interim legislative study regarding the oil extraction tax exemption available for incremental production from a tertiary recovery project that uses carbon dioxide. The interim Taxation Committee will be conducting this study, along with a study contained in SB 2015 § 42 regarding the current scientific and economic information regarding oil and gas recovery and enhanced recovery techniques. SB 2015 §11 contains \$400,000 for a consultant to assist in the study of oil and gas tax incentive and recovery techniques.

## Additional Legislation

Additional bills have been introduced that relate to EmPower ND Commission recommendations. These bills have not been specifically endorsed by the Commission.

**Infrastructure** – Up-to-date infrastructure is the foundation for continuing existing development and expanding into new areas.

The legislature approved the Surge Funding Bill, Senate Bill 2103, which became effective on February 24, 2015, with the Governor's signature. This bill appropriates a total of \$1.1 billion from the Strategic Investment and Improvement Funds including \$522 million for oil-producing areas, \$128 million for non-oil-producing areas, and \$450 million for state highway projects.

The legislature approved changes to the gross production tax distribution formula through the passage of House Bill 1176. This bill increases the allocation of gross production tax revenue from 25% to 30%. HB 1176 also appropriates \$139,300,000 in Oil and Gas Impact Grants.

The legislature approved transportation funding that totaled \$2.3 billion to rebuild and repair state highways, county and township roads, bypass routes and other statewide transportation infrastructure (HB 1012, SB 2103, HB 1176).

HB 1377 creates a Political Subdivision Allocation Fund which receives 30% of the additional oil and gas tax revenues after the other allocations are made. This fund will



be used to provide additional allocations based upon each political subdivision's oil and gas gross production tax allocations during the most recently completed formula allocation year. This is projected to provide an additional \$41 million in funding during the 2015-17 biennium. This provision is set to expire after June 30, 2017.

SB 2020, the appropriation for the State Water Commission, includes funding for water projects across the state. This includes funding specifically related to a fertilizer or chemical processing facility to be constructed in Stutsman County with \$10 million for a grant and \$40 million for a loan for a water reuse facility and \$20 million for the Central Dakota Water Supply Project. SB 2020 also includes \$130 million for rural water supply projects such as the Western Area Water Supply, Northwest Area Water Supply and Southwest Water Pipeline projects.

HB 1443 creates an Infrastructure Revolving Loan Fund to address the needs of communities by providing critical infrastructure funding. A total of \$150 million is provided for this fund, including \$100 million from the Bank of North Dakota's profits and \$50 million from the Strategic Investment and Improvements Fund. The Bank of North Dakota may not charge more than 2% interest rate.

**Workforce** – As the energy industry expands, the workforce must be available to meet the demands.

HB 1014 provides \$30 million in available tax credits and up to \$10 million in direct funding from the Bank of North Dakota for the Housing Incentive Fund.

HB 1018 includes \$50,000 for teachers in industry externships that will encourage up to 50 teachers to spend four weeks during the summer working within private industry and take what they learned back to the classroom. \$1.5 million was again appropriated for Operation Intern.

HB 1018 also includes \$1 million for Workforce Enhancement Grants at North Dakota's public two-year campuses and \$3 million for Tribal College Grants to enhance training at tribal colleges. HB 1019 includes \$3 million for Train ND.

**Research and Development** – Research and development serves as the bridge for industry to move from concepts to new development and commercialization. The Lignite Research, Oil and Gas Research, and Renewable Research programs continue to be funded through continuing appropriations funding. In addition, \$5 million in one-time funding was provided for Lignite Research Council grants for commercializing the capture, utilization, and storage of carbon dioxide and for next generation electric generation technology, including the Allam Cycle (HB 1014). The legislature also approved funding for Research North Dakota will provides grants to

research universities for research, development and commercialization projects, including energy-related projects (HB 1018).

**Regulatory Environment** – A regulatory environment, as both the federal and state levels, that encourages economic growth while ensuring environmentally-responsible development of natural resources is essential.

The legislature provided additional FTE's and resources to regulatory agencies, including:

- Department of Health: a total of 4 FTE positions in the Environmental Health Section (HB 1004).
- Department of Mineral Resources: a total of 8 FTE positions related to a pipeline regulator program established in HB 1358 and 5 petroleum engineering contingency FTE positions (HB 1014).
- Public Service Commission: 1 FTE position related to a railroad safety pilot program (SB 2008).
- State Water Commission: a total of 7 FTE positions including water permitting positions, regulatory director, water supply project manager and a sovereign lands position (SB 2020).

HB 1432 establishes a Federal Environmental Law Impact Review Committee and appropriates \$1.5 million to the Federal Environmental Law Impact Review Fund.

**Energy Growth Incentives** – New and continued incentives are needed to capitalize on development opportunities across North Dakota's energy sectors.

HB 1390 establishes a pilot project for commercial oilfield special waste recycling facilities, including a beneficial use demonstration project.

SB 2276, as amended, provides for an optional interim legislative study related to providing natural gas service to underserved communities.

HB 1476 provides a flat and predictable oil extraction tax rate for companies and improves the state's ability to project revenues.

## Other Energy Legislation

Other energy related legislation that was approved included:

- HB 1032 - Relating to the abandoned oil and gas well plugging and site reclamation fund.
- HB 1113 - Relating to custody of land used for disposal of radioactive material.
- HB 1124 - Relating to utilities' ten-year plans submitted to the public service commission.



- HB 1228 - Relating to the carryforward period for excess geothermal, solar, wind, or biomass energy device income tax credits.
- HB 1358 - Relating to the uses of the abandoned oil and gas well plugging and site reclamation fund.
- HB 1374 - Relating to oil and gas tax revenue put options and swaps.
- HB 1377 - Relating to the unobligated balance of the strategic investment and improvements fund and the state share of oil and gas tax allocations.
- HB 1382 - Relating to the construction of electric transmission lines by cooperatives.
- SB 2055 - Relating to reports by electric transmission, distribution, and generation companies for tax purposes.
- SB 2120 - Relating to energy conversion and transmission facility siting application fees.
- SB 2123 - Relating to imposing an application fee for a certificate of public convenience and necessity by a utility other than an electric utility.
- SB 2124 - Relating to the issuance of a notice for an electric service area agreement.
- SB 2167 - A BILL for for an Act to provide for a legislative management study of the one-call system.
- SB 2172 - Relating to allocation and distribution of the oil and gas gross production tax and the oil extraction tax pursuant to the distribution rules in place when revenue is received.
- SB 2190 - Relating to the abandoned oil and gas well plugging and site reclamation fund.
- SB 2226 - Relating to authority of the governor to enter agreements relating to taxation and regulation of oil and gas exploration and production within the boundaries of the Fort Berthold Reservation, Standing Rock Sioux Tribe Reservation, or Turtle Mountain Band of Chippewa Indians Reservation.
- SB 2271 - Relating to a pipeline restoration and reclamation oversight program.
- SB 2276 - A BILL for an Act to provide for a legislative management study related to providing natural gas service to underserved communities in this state.
- SB 2343- Relating to a report on the fiscal impact of certain actions by the industrial commission to the legislative assembly or budget section.
- SB 2356- A BILL for an Act to provide for a legislative management study of oil and gas and abandoned gravel pit reclamation practices.
- SB 2372- A BILL for an Act to provide for a legislative management study of environmental protection agency regulations regarding carbon dioxide emissions for new and existing electric generation units.
- SB 2377- Relating to the definition of coal and leonardite.

- HCR 3008 - A concurrent resolution urging Congress to lift the prohibition on the export of crude oil from the United States.
- HCR 3009 - A concurrent resolution urging Congress to pass H.R. 5078 or otherwise address the concerns of the agriculture industry, water development industry, and water management industry, in defining the "waters of the United States" in the Clean Water Act.
- HCR 3018 - A concurrent resolution urging Congress to pursue enactment of the Regulations from the Executive in Need of Scrutiny Act introduced by Senator Paul in February 2013 requiring Congress to approve every major rule proposed by the Executive Branch which has an annual economic impact of one hundred million dollars or more, before it can be enforced on the American people.
- HCR 3024 - A concurrent resolution urging the federal government to refrain from enacting regulations that threaten the reliability and affordability of electric power in the Northern Great Plains.
- HCR 3033 - A concurrent resolution urging Congress to propose the Regulation Freedom amendment to the United States Constitution.
- HCR 3034 - A concurrent resolution urging Congress to authorize a compact agreement between member states and contiguous states of the Western States Transportation Alliance to lift the federal freeze on commercial vehicle weight and size limitations.

## 2015-16 Interim Studies

### Energy Development & Transmission Committee

- Study of the oil and gas tax revenue allocation formulas. The study must include consideration of current and historical allocations to political subdivisions and the appropriate level of oil and gas tax revenue allocations to political subdivisions based on infrastructure and other needs.
- Study of the impacts and costs of the federal Environmental Protection Agency regulations on carbon dioxide emissions for new and existing electric generation units. The study must include the regulations' estimated compliance costs on the industry, estimated impacts on regional grid reliability, estimated economic impact to ratepayers in this state, and the feasibility of implementing the regulations, including the proposed timeline. The study must also include an update on the status of technologies related to reduction of carbon dioxide emissions. The Legislative Management may consult with the Lignite Energy Council, State Department of Health, Public Service Commission, Attorney General, and other state and federal agencies as needed.
- Receive biennial report from the Energy Policy Commission (EmPower ND) and its recommendations to the state energy policy.



- Study the impact of a comprehensive energy policy for the state and the development of each facet of the energy industry from the obtaining of the raw natural resource to the sale of the final product in this state, other states, and other countries.
- Receive report from the Energy and Environmental Research Center by December 1, 2015, regarding recommendations on existing regulations on construction and monitoring of crude oil and produced water pipelines, determine the feasibility and cost effectiveness of requiring leak detection and monitoring technology on new and existing pipeline systems
- Receive report from the Public Service Commission at least once each year of the 2015-16 interim, on the most current information available on the status of retail sales of electricity in the state meeting or exceeding the state renewable and recycled energy objective established in Section 49-02-28 and a comparison of the amount of renewable and recycled energy produced in the state with the amount sold at retail in the state.

#### Taxation Committee

- Study the current scientific and economic information regarding oil and gas recovery and enhanced recovery techniques, including the use of carbon dioxide, the timeline for implementing the techniques, and the estimated future annual economic impact, to evaluate existing and alternative tax incentives and recommend tax incentives that under current and foreseeable conditions, and within different oil formations, would best serve the interests of the state, political subdivisions, and fossil fuel energy production industries. Section 11 of Senate Bill No. 2015 provides an appropriation of \$400,000 to the Legislative Council for a 2015-17 biennium consultant study of oil and gas tax incentives and recovery techniques.
- Study the oil extraction tax exemption available for incremental production from a tertiary recovery project that uses carbon dioxide. The study must include consideration of the potential benefits and costs to industry, the state, and the environment of using carbon dioxide enhanced recovery methods. The Legislative Management shall secure assistance from the Energy and Environmental Research Center to analyze potential future usage of carbon dioxide in oil recovery operations in the Bakken and Three Forks Formations, the potential production and environmental benefits of that usage for energy industries in this state, the economic conditions in which that usage is feasible for oil producers, and the estimated fiscal effect of that usage for the state and political subdivisions.
- Receive report from the Tax Commissioner within 120 days after the end of each fiscal year from compiled reports from counties receiving allocations of oil and

gas gross production tax revenues describing funds received, expended, and unexpended.

#### Economic Impact Committee

- Study the One-Call excavation notice system
- Study issues related to providing natural gas service to underserved communities in this state from available natural gas not otherwise committed in main gas transmission lines near those underserved communities

#### Education Committee

- Study the nature and scope of career and technical education opportunities available to students in this state, the manner in which such opportunities are financially supported, and the manner in which such opportunities are monitored to ensure that they provide students with 21st century technical skills that are aligned to industry standards, in addition to providing appropriate academic foundations

#### Higher Education Committee

- Study the missions of all two-year institutions and the missions of any other institutions under the control of the State Board of Higher Education, as determined by the Legislative Management, including the feasibility and desirability of the institutions offering only workforce and career and technical education programs. The study must review the current missions of the institutions, current and projected course and program enrollments, projected workforce needs, including how the institutions can serve the needs, and options to increase operating efficiencies.
- Receive report from the State Board of Higher Education on the status of the development of the unified workforce, vocational, and technical education program system

#### Political Subdivision Taxation Committee

- Study the analysis of economic development tax incentives as provided in Section 54-35-26.

#### Transportation Committee

- Study truck permitting systems in oil and gas producing counties. The study must review the North Dakota Association of Oil and Gas Producing Counties' uniform county truck permit program, including the system's integration with the Highway Patrol's online electronic truck permitting and routing system and the communications between county representatives and industry representatives regarding road conditions. The study must evaluate the appropriateness of additional fees assessed by the board of county commissioners and other local



authorities to the oil and gas industry related to additional road permitting fees and analyze other relevant data regarding uniform truck permitting fees and procedures. The study must include input from representatives of the North Dakota Petroleum Council, representatives of the North Dakota Association of Oil and Gas Producing Counties, and other interested persons.

- Study special transportation funding distributions to political subdivisions. The study must review distribution methods, including the feasibility and desirability of using Upper Great Plains Transportation Institute needs studies, county major collector miles, or a combination of both, if there are future special transportation funding distributions to political subdivisions, and must review options to ensure counties are reporting information consistently. The Legislative Management shall consider methods to ensure that road projects in each county are properly coordinated with state road projects and projects in adjacent counties. The study must also review the use of special transportation funding in comparison to the Legislative Assembly's intent.
- Receive a report from the Department of Transportation regarding the department's updated North Dakota State Rail Plan.